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**OFFICE OF PETITIONS**

In re Application of  
09/804,078  
Application No. 09/804,078  
Filed: March 13, 2001,  
Attorney Docket No. 084335-0119

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: **DECISION GRANTING PETITION**  
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This decision is in response to Applicant's "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 CFR 1.705(b)" timely filed June 21, 2004 requesting that the Office adjust the amount of PTA determined at the time of the mailing of the notice of allowance from three hundred and sixty-one (361) days to an amount of four hundred and ten (410) days at the time of the mailing of the notice of allowance.

Applicant's request for reconsideration of the patent term adjustment determination is **GRANTED**. The Office will adjust the PAIR calculation to reflect a determination of four hundred and ten (410) days at the time of the mailing of the notice of allowance. The Office will provide a copy of the adjusted PAIR calculation with this decision.

Applicant asserts that the determination is incorrect because the Office assessed an overdue response to the Office action at eighty (80) days rather than thirty-one (days) calculated by applicant. Applicant asserts that the calculation is inaccurate because the Office measure the three month period from the initial Office action mail date rather than the mail date which restarted the three month response period.

Applicant's arguments are deemed persuasive. Applicant is correct in the amount of delay for failing to reply within three months should be limited to thirty-one days.<sup>1</sup> Accordingly, the overall amount of applicant delay is thirty-one days since this was the only applicant delay. The Office did delay in the obligation to provide at least one notification under 35 U.S.C. 132 or notice of allowance under 35 U.S.C. 151 no later than fourteen months after the date on which the application was filed, a four hundred and forty-one (441) day delay. Accordingly the overall correct determination at the time of the mailing of the notice of allowance is four hundred and ten days (441-31= 410).

The Office has assessed the \$200.00 petition fee required. No additional fees are necessary.

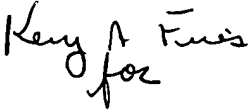
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<sup>1</sup>The Office action was remailed on September 16, 2003. Applicant had until December 16, 2003 to file a response without applicant delay. However, applicant did not reply until January 16, 2004, a thirty-one day delay.

078

After the mailing of this decision, the Office will forward the application to the Office of Patent Publications for a prompt issuance of the patent. Any additional delays for the Office's failure to issue the application within four months of the issue payment and all other requirements will be assessed at the time of the issuance of the patent.

Any questions related to this decision should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

A handwritten signature in cursive script that reads "Kery A. Fries" with the word "for" written below it.

Karin Ferriter,  
Senior Legal Advisor,  
Office of Deputy Commissioner  
for Patent Examination Policy